

[

INSTRUCTION NO. [1-011(a)]

[Multiple Lesser Included Offense Instruction]

The Defendant is charged with_____. _____ and _____ are lesser included offenses of _____. A lesser-included offense is one that is less serious than the charged offense. The Defendant cannot be convicted of more than one of these offenses.

Therefore, after considering all of the evidence as it pertains to the charge, and the lesser included offenses, you should first consider the verdict on the greater offense of _____. If you are unable after reasonable effort to reach a verdict on the greater offense, you may consider the lesser offenses of _____ and _____.

In the event you find the Defendant guilty of [*charged offense*], you need go no further as you will have reached a verdict in this case and shall contact the bailiff to return you to open court.

In the event you find the Defendant guilty of the lesser included offense of _____, you need go no further as you have reached a verdict in this case and shall contact the bailiff to return you to open court.

In the event you find the Defendant guilty of the lesser included offense of _____, you need go no further as you have reached a verdict in this case and shall contact the bailiff to return you to open court.

GIVEN:_____ District Judge

Source: MCJI 1011(a)

Plaintiff's Proposed Instruction No._____ Defendant's Proposed Instruction No._____

Given as Instruction No._____ Refused_____ Withdrawn_____ By_____

[Multiple Lesser Included Offense Instruction, Source and Comment]

SOURCE: MCJI 1-011

COMMENT: This is a modified version of MCJI 1-011. It is based on a situation in which there are multiple lesser included offenses. This instruction should be given in conjunction with the multiple lesser included verdict form, and instructs the jury to find the Defendant guilty of **only one** of the potential offenses. This is consistent with the Montana Supreme Court holding in *State v. Scarborough*, 302 Mont. 350, 14 P.3d 1202 (2000).

See also *State v. Robbins*, 1998 MT 297, 292 Mont. 23, 971 P.2d 379, and *State v. Rogers*, 2001 MT 165, 32 P.3d 724, which impact on counsel's decision relative to the use of lesser included offenses.